JUN 13 1956
HAROLD B. WILLEY, Clerk

Supreme Court of the United States

OCTOBER TERM, 1955

No. 170

In the Matter of the Application of
CHARLES GOODWIN, JR.,
Appellant,

against

THE STATE TAX COMMISSION.
Appellee,

TO REVIEW A DETERMINATION MADE UNDER ARTICLE 16 OF THE TAX LAW.

JURISDICTIONAL STATEMENT

CHARLES GOODWIN, JR.
Appellant pro se
20 Exchange Place
New York 5, N. Y.

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CONSTITUTION OF THE UNITED STATES

ARTICLE IV, SECTION 2 4

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Jurisdictional Statement

Appellant, a citizen of New Jersey, here contests the New York income tax imposed upon his 1951 income to the extent that it is higher than the New York income tax applicable to a New York resident with the same amount of 1951 income and expenses as the appellant, the discrimination against the appellant being the result of the disallowance, in the case of nonresidents only, of certain deductions not connected with New York income.

This appeal is from a final judgment of the Court of Appeals of the State of New York, entered on March 15, 1956, affirming a determination of the Appellate Division of the Supreme Court of the State of New York, Third Judicial

Department, entered on December 1, 1955, which affirmed a determination of the New York State Tax Commission denying the appellant the refund of a portion of his 1951 personal income tax.

This Statement is submitted pursuant to Rules 13 and 15 of this Court to demonstrate that this Court has jurisdiction of this appeal and that a substantial Federal question is presented.

Opinions Below

No opinion was handed down by the Court of Appeals of the State of New York and its judgment is reported at 1 N. Y. 2d 680.

The opinion of the Appellate Division of the Supreme Court of the State of New York, Third Judicial Department, is reported at 286 App. Div. 694 and at 146 N. Y. S. 2d 172 and is appended hereto as Appendix A.

A copy of the Determination of the State Tax Commission, not officially or unofficially reported, together with the stipulation attached thereto is appended hereto as Appendix B.

The Grounds on Which the Jurisdiction of This Court is Invoked

This proceeding was brought under Article 78 of the New York Civil Practice Act to review a Determination of the State Tax Commission which affirmed the assessment of additional personal income taxes against the appellant for the year 1951. Refund of 1951 personal income tax in the amount of $101.58 is sought on the ground that the New York personal income tax law discriminates against the appellant solely by reason of the fact that during 1951 he was not a resident of the State of New York and denies to the appellant the deduction of certain expenses which would be deductible if the appellant had been a resident of

New York during 1951. The personal income tax exacted from the appellant with respect to his 1951 income exceeds by $101.58 the New York personal income tax which would be payable by an individual resident in New York with the same 1951 income and expenses. Each of the reviewing tribunals has determined that the disallowance of the deductions in question is not in violation of the Constitution of the United States.

The final judgment of the New York Court of Appeals upholding the appellee's construction of the New York personal income tax law was entered on March 15, 1956. This final judgment duly remitted the record and the judgment in the cause to the Supreme Court of the State of New York there to be proceeded upon according to law. Such remittitur was thereafter duly filed in the said Supreme Court whereupon an order was made and entered by the said Supreme Court on April 2, 1956 making the order of affirmance of the Court of Appeals the order of the Supreme Court of the State of New York. No application for rehearing was filed and Notice of Appeal to this Court was duly filed in the Supreme Court of the State of New York, Albany County (the Court possessed of the record) on April 26, 1956.

This Court's jurisdiction to review said decision and judgment by appeal rests upon 62 Stat. 929, section 1257(2); 28 U. S. C. section 1257(2).

The following decisions sustain the jurisdiction of this Court to review this judgment of the highest court of New York on direct appeal:

Ward v. *Maryland*, 12 Wall. 418

International Harvester Credit Corporation v. *Goodrich*, 350 U. S. 537 (April 9, 1956).

State Statutes Involved

This appeal involves the validity of certain provisions of the New York personal income tax law, Chapter 50, Article 16 of the New York Tax Law, specifically sections 351, 351-a, 359 and 360 thereof, portions of which are set out verbatim in Appendix C hereto.

Question Presented

Where all of appellant's 1951 income was from sources within the State of New York and was subjected to personal income tax by the State of New York, does the provision of the New York personal income tax law which disallows the deduction by the appellant of certain 1951 expenses, solely because the appellant was a nonresident of New York and such expenses were not connected with his New York income, violate the Comity Clause (Art. IV, section 2) of the Constitution of the United States, providing as follows:

> "The Citizens of each State shall be entitled to all Privileges and Immunities of Citizens in the several States."

Statement of the Case

The appellant is, and during 1951 was, a citizen and resident of New Jersey, residing in Tenafly, New Jersey, and practicing law in New York City. In addition, appellant is and was the Vice President of The Evergreens, a corporation owning and operating a cemetery in the City of New York. All of appellant's 1951 income was earned within the State of New York, being exclusively from the practice of law in New York and compensation for services to The Evergreens.

Appellant on his 1951 New York income tax return claimed and was allowed certain deductions in the amount of $717.50 for Bar Association dues, legal periodicals and business expenses related to his New York income and contributions to New York charities. There is no dispute as to these items.

In addition, appellant claimed the deduction of Tenafly real estate taxes in the amount of $302.03 and mortgage interest in the amount of $669.23, both of said amounts being paid in connection with his personal residence. Appellant also claimed the deduction of medical expenses in the amount of $1,298.33 and life insurance premiums in the amount of $150. All of these deductions were disallowed by the State Tax Commission solely on the ground that the appellant was a nonresident and that said deductions were not connected with New York income. These items are in dispute.

All of the deductions claimed and disallowed would have been allowed to the appellant if he were a resident of New York. New York residents are permitted to deduct up to $150 of life insurance premiums, medical expenses within certain limits and taxes and interest paid with respect to New Jersey real estate, even though such amounts are unconnected with New York income. For example, a New York resident could deduct taxes and mortgage interest paid with respect to a summer camp on one of New Jersey's resort lakes. Only nonresidents are denied the benefit of such deductions and then only because they do not reside in the State of New York.

Since all of the appellant's 1951 income was taxed by the State of New York, he has been subjected to a higher New York income tax than would be imposed upon a New York resident with exactly the same income and expenses. The amount of the overpayment of tax resulting from this 1951 discrimination against the appellant solely by reason of the fact that he was not a New York resident is $101.58.

Manner in Which the Federal Question Was Raised

The Federal question raised here has been in issue from the inception of this proceeding. It was raised initially by the appellant in his Petition for Review dated and verified March 7, 1955 and submitted in support of his Notice

of Motion dated March 7, 1955 for the review of the Determination of the State Tax Commission.

Paragraph 6 of said Petition for Review reads as follows:

> "6. The aforesaid determination was erroneous and in violation of the Tax Law and of my rights under the New York Constitution and the Constitution of the United States. In making the said determination The State Tax Commission proceeded in excess of its jurisdiction."

The question presented under the United States Constitution was the only issue argued by the appellant before the Appellate Division of the Supreme Court of the State of New York, Third Judicial Department, and before the Court of Appeals of the State of New York. The presence of the Federal constitutional question was recognized by the New York courts, the first paragraph of the opinion of the Appellate Division stating the issue presented as follows:

> "This case presents the question of the constitutionality of the provisions of section 360 of the New York State Tax Law which allow residents to make certain deductions in computing their net income which nonresidents are not allowed to make. It is asserted that the provisions discriminate against nonresidents in violation of section 2 of article IV of the Federal Constitution which provides that 'The Citizens of Each State shall be entitled to all Privileges and Immunities of Citizens in the several States.'" (p. 695).

The New York courts held that the statutory provisions in question did not violate the provisions of the United States Constitution.

A Substantial Federal Question is Presented

The Comity Clause of the Constitution of the United States has been generally interpreted to forbid any state to discriminate against citizens of other states in favor of

its own. The provisions of the New York personal income tax law do discriminate against the appellant and in favor of residents of New York by disallowing to nonresidents the deduction of certain expenses allowed to residents. All of the appellant's 1951 income was from sources within the State of New York and was subjected to personal income tax by that State. Solely because he was not a resident of the State of New York during 1951 the appellant was required to pay to that State a 1951 New York personal income tax which exceeded by $101.58 the amount payable by a New York resident with the same 1951 income and expenses as the appellant. It can be assumed that there are many other nonresidents of the State of New York who were similarly discriminated against since it is a matter of common knowledge that a great many people whose sole source of income is from employment in New York City live in New Jersey and Connecticut. Furthermore, the Solicitor General of the State of New York argued in the Court of Appeals that fourteen other states have similar statutory provisions denying certain income tax deductions to nonresidents.

The State of New York first enacted a personal income tax law in 1919, the tax then as now being imposed upon the total income of residents of the State of New York and upon the income derived by nonresidents from sources within the State of New York. Residents were granted the deduction of certain personal exemptions, the amount thereof being dependent upon marital status and the number of dependents, which personal exemptions were denied to nonresidents. Furthermore, the law as originally enacted contained the same general type of provisions now at issue, that is certain deductions allowed to residents were not allowable to nonresidents because not connected with New York income.

The constitutionality of the New York personal income tax as applied to nonresidents was immediately tested in the Federal courts. The Yale & Towne Manufacturing Company, a Connecticut corporation operating a factory in New

York State, brought an action in the United States District Court for the Southern District of New York to enjoin the enforcement of the New York personal income tax as applied to nonresidents on the ground that it was in conflict with the provisions of the Constitution of the United States. Jurisdiction of the suit was accepted for the reason that the New York Personal Income Tax Act made Yale & Towne Manufacturing Company liable for the withholding of certain amounts of income tax from the salaries of its nonresident employees working in the New York factory.

The District Court in an opinion by Judge Knox held the New York Personal Income Tax Act unconstitutional as applied to nonresidents on two grounds, the first being the failure to allow nonresidents personal exemptions equivalent to those granted to residents and the second being the failure to allow nonresidents the same deductions as residents. *Travis* v. *Yale & Towne Manufacturing Company*, 262 Fed. 576.

The decision of the District Court was appealed directly to the Supreme Court of the United States which affirmed the decision below on the first ground only, that is the failure to allow personal exemptions to nonresidents. *Travis* v. *Yale & Towne Manufacturing Company*, 252 U. S. 60. With respect to the failure to allow nonresidents the same deductions as residents this Court stated that in *Shaffer* v. *Carter*, 252 U. S. 37, decided the same day, it had been held that "there is no unconstitutional discrimination against citizens of other States in confining the deduction of expenses, losses, etc., in the case of nonresident taxpayers, to such as are connected with income arising from sources within the taxing State". Reference to the opinion of this Court in the *Shaffer* case, however, shows that that point was not passed upon and, in fact, was specifically reserved for future decision, pp. 56-57:

> "Appellant contends that there is a denial to noncitizens of the privileges and immunities to which they are entitled, and also a denial of the equal protection of the laws, in that the act permits residents to deduct

from their gross income not only losses incurred within the State of Oklahoma but also those sustained outside of that State, while non-residents may deduct only those incurred within the State. The difference, however, is only such as arises naturally from the extent of the jurisdiction of the State in the two classes o cases, and cannot be regarded as an unfriendly or unreasonable discrimination. As to residents it may, and does, exert its taxing power over their income from all sources, whether within or without the State, and it accords to them a corresponding privilege of deducting their losses, wherever these accrue. As to non-residents, the jurisdiction extends only to their property owned within the State and their business, trade, or profession carried on therein, and the tax is only on such income as is derived from those sources. Hence there is no obligation to accord to them a deduction by reason of losses elsewhere incurred. *It may be remarked, in passing, that there is no showing that appellant has sustained such losses, and so he is not entitled to raise this question.*" [italics supplied]

It is significant that the Oklahoma law in question in the *Shaffer* case did not in fact result in any discrimination against Mr. Shaffer as a nonresident because his income from sources outside of Oklahoma was not taxed. In this case, however, the New York law does so discriminate against the appellant because all of his income is from New York and thus taxed without the allowance of deductions generally available to residents. This failure to allow the deductions to appellant has the effect of taxing his income at a higher rate than that applicable to a New York resident similarly situated. The *Shaffer* case specifically held that the tax must be "not more onerous in its effect" upon non-residents than residents, and also made it clear that the actual impact of the tax is controlling, although the taxing statute might appear on its face to be fair to nonresidents, stating:

"... For, where the question is whether a state taxing law contravenes rights secured by that instrument [the

> U. S. Constitution], the decision must depend not upon any mere question of form, construction, or definition, but upon the practical operation and effect of the tax imposed . . ." (p. 55)

The Court upheld the Oklahoma tax upon Mr. Shaffer, despite the fact that he was not a resident of Oklahoma, because "in effect citizens and residents of the State are subjected at least to the same burden as nonresidents". As pointed out above, this is not the case here. Appellant has been called upon to bear a larger share of the New York tax than a resident of equivalent ability to pay, with the result that the tax is "more onerous in its effect" upon the appellant.

It has been suggested that, since a nonresident is taxed only upon his New York income, it is perfectly proper to allow him only his New York deductions. Residents, on the other hand, who are taxed upon their income from all sources are allowed to deduct expenses whether or not related to New York income. While this reasoning has a certain superficial validity, it must fall when applied to the facts here present, since appellant's entire 1951 income was from sources within New York State. In any event, this Court examined and rejected this type of argument in *Travis* v. *Yale & Towne Manufacturing Company*, 252 U. S. 60, 80-82:

> "In the concrete, the particular incidence of the discrimination is upon citizens of Connecticut and New Jersey, neither of which States has an income tax law. A considerable number of complainant's employees, residents and citizens of one or the other of those States, spend their working time at its office in the city of New York, and earn their salaries there. The case is typical; it being a matter of common knowledge that from necessity, due to the geographical situation of that city, in close proximity to the neighboring States, many thousands of men and women, residents and citizens of those States, go daily from their homes to the city and earn their livelihood there. They pursue their

several occupations side by side with residents of the State of New York—in effect competing with them as to wages, salaries, and other terms of employment. Whether they must pay a tax upon the first $1,000 or $2,000 of income, while their associates and competitors who reside in New York do not, makes a substantial difference. Under the circumstances as disclosed, we are unable to find adequate ground for the discrimination, and are constrained to hold that it is an unwarranted denial to the citizens of Connecticut and New Jersey of the privileges and immunities enjoyed by citizens of New York. This is not a case of occasional or accidental inequality due to circumstances personal to the taxpayer (see *Amoskeag Savings Bank* v. *Purdy*, 231 U. S. 373, 393-394; *Maxwell* v. *Bugbee*, 250 U. S. 525, 543); but a general rule, operating to the disadvantage of all non-residents including those who are citizens of the neighboring States, and favoring all residents including those who are citizens of the taxing State.

It cannot be deemed to be counterbalanced by the provision of par. 3 of § 359 which excludes from the income of non-resident taxpayers 'annuities, interest on bank deposits, interest on bonds, notes or other interest-bearing obligations or dividends from corporations, except to the extent to which the same shall be a part of income from any business, trade, profession or occupation carried on in this state subject to taxation under this article.' This provision is not so conditioned as probably to benefit non-residents to a degree corresponding to the discrimination against them; it seems to have been designed rather (as is avowed in appellant's brief) to preserve the preeminence of New York City as a financial center.

Nor can the discrimination be upheld, as is attempted to be done, upon the theory that non-residents have untaxed income derived from sources in their home States or elsewhere outside of the State of New York, corresponding to the amount upon which residents of that State are exempt from taxation under this act. The discrimination is not conditioned upon

the existence of such untaxed income; and it would be rash to assume that non-residents taxable in New York under this law, as a class, are receiving additional income from outside sources equivalent to the amount of the exemptions that are accorded to citizens of New York and denied to them.

In the brief submitted by the Attorney General of New York in behalf of appellant, it is said that the framers of the act, in embodying in it the provision for unequal treatment of the residents of other States with respect to the exemptions, looked forward to the speedy adoption of an income tax by the adjoining States; in which event, injustice to their citizens on the part of New York could be avoided by providing similar exemptions similarly conditioned. This, however, is wholly speculative; New York has no authority to legislate for the adjoining States; and we must pass upon its statute with respect to its effect and operation in the existing situation. But besides, in view of the provisions of the Constitution of the United States, a discrimination by the State of New York against the citizens of adjoining States would not be cured were those States to establish like discriminations against citizens of the State of New York. A State may not barter away the right, conferred upon its citizens by the Constitution of the United States, to enjoy the privileges and immunities of citizens when they go into other States. Nor can discrimination be corrected by retaliation; to prevent this was one of the chief ends sought to be accomplished by the adoption of the Constitution."

Appellant does not dispute the general principle that a state may make a reasonable distinction between residents and nonresidents based upon "valid independent reasons". *Toomer* v. *Witsell*, 334 U. S. 385, 396. However, it is submitted that there is no valid reason for the discrimination here protested. It seems clear that mere residence in Bergen County, New Jersey, rather than Westchester County or Nassau County, New York, will not support a substantial increase in the amount of income tax due to the State of

New York. If any distinction is justified merely by reason of such difference in place of residence, then the discrimination should be in favor of and not against the taxpayer who resides outside the State since he obviously does not make as much use of the facilities and services afforded by the State as does the resident. The State of New York is naturally put to greater expense furnishing schools, roads, protection, and recreational and other facilities for residents and their families than for a taxpayer who maintains his family outside of the State, as does appellant. However, appellant here seeks no discrimination in his favor but merely demands that he be required to pay no greater tax to the State of New York than would be payable if he were a resident with the same income and expense.

Conclusion

This appeal presents a question not argued or decided in either *Shaffer* v. *Carter* or *Travis* v. *Yale & Towne*. This is the first case presented to this Court in which the entire income of the nonresident has been from sources within the taxing state and subjected to tax by it. In such a situation the failure to allow the appellant the same deductions allowed to residents necessarily discriminates against the appellant and in favor of residents. The appellant here has been required to bear more than his fair share of the New York tax burden.

It is, therefore, respectfully submitted that this Court has jurisdiction of this appeal under 28 U.S.C. section 1257(2) and that the Federal question herein presented is so substantial as to require plenary consideration with briefs on the merits and oral argument, for their resolution.

CHARLES GOODWIN, JR.
Appellant pro se
20 Exchange Place
New York 5, N. Y.

Dated: New York, New York
May 17, 1956

APPENDIX A

Opinion of the Appellate Division of the Supreme Court of the State of New York, Third Judicial Department

REPORTED AT 286 App. Div. 694, 146 N.Y.S. 2d 172

DECIDED NOVEMBER 23, 1955

IN THE MATTER

OF

CHARLES GOODWIN, JR.,
Petitioner,

against

STATE TAX COMMISSION,
Respondent.

The opinion of the Court was delivered by HALPERN, J. This case presents the question of the constitutionality of the provisions of section 360 of the New York State Tax Law which allow residents to make certain deductions in computing their net income which nonresidents are not allowed to make. It is asserted that the provisions discriminate against nonresidents in violation of section 2 of article IV of the Federal Constitution which provides that "The Citizens of each State shall be entitled to all Privileges and Immunities of Citizens in the several States".*

* The fact that "the statute is couched in terms of residence" does not take it "outside the scope of the privileges and immunities clause, which speaks of citizens" (*Toomer* v. *Witsell*, 334 U. S. 385, 397). A statute which unjustifiably discriminates against residents of other States "has the necessary effect of including in the discrimination those who are citizens of other States" and therefore it falls within the condemnation of the privileges and immunities clause (*Travis* v. *Yale & Towne Mfg. Co.*, 252 U. S. 60, 79).

The petitioner is a lawyer residing in Tenafly, New Jersey, and practicing in New York City. All his income for the year in question, 1951, was earned within the State of New York. In his income tax return, the petitioner claimed and was allowed deductions for expenses connected with the production of his income, such as bar association dues, subscriptions for legal periodicals, and entertainment and car expense. He was also allowed to deduct certain charitable contributions. There is no dispute as to these items.

In addition, the petitioner claimed the right to deduct real estate taxes on his home in Tenafly, New Jersey, interest on the mortgage on his home, medical expenses (in excess of 5% of his net income), and life insurance premiums in the amount of $150. These deductions were disallowed, upon the ground that, under subdivision 11 of section 360 of the Tax Law, a nonresident was not entitled to deductions of this type, although a resident would have been allowed to make them under subdivisions 2, 3, 15 and 16 of section 360. Subdivision 11, so far as here relevant, reads as follows: "In the case of a taxpayer other than a resident of the state the deductions allowed in this section * * * shall be allowed only if, and to the extent that, they are connected with income arising from sources within the state and taxable under this article to a nonresident taxpayer".

The petitioner concedes that the deductions claimed were not "connected with income arising from sources within the State" and that he is not entitled to make these deductions under the terms of section 360 but he challenges the constitutionality of the statute on the ground that it discriminates improperly against nonresidents. If his challenge is well-founded, the entire State Income Tax Law in its present form is unenforcible as against nonresidents (*People ex rel. Stafford* v. *Travis,* 231 N. Y. 339, 348-349).

The question raised by the petitioner is not a new one. Immediately after the enactment of the New York State Income Tax Law in 1919 (L. 1919, ch. 627), the validity of the statute was challenged in *Travis* v. *Yale & Towne Mfg. Co.* (252 U. S. 60, *supra*). That case was decided by

the United States Supreme Court on March 1, 1920, together with a case involving the constitutionality of the Oklahoma Income Tax Law (*Shaffer* v. *Carter*, 252 U. S. 37).

The first question presented in the two cases was the general question of whether a State had the power to tax any part of the income of the residents of other States. In the *Shaffer* case (p. 56), the Supreme Court upheld the State's power to tax nonresidents upon income earned within the State. It then passed to a consideration of the specific question of the validity of the provision of the Oklahoma Income Tax Law, similar to the provision in the New York State law, allowing "residents to deduct from their gross income not only losses incurred within the State of Oklahoma but also those sustained outside of that State, while non-residents may deduct only those incurred within the State." The court held this provision to be valid: "The difference, however, is only such as arises naturally from the extent of the jurisdiction of the State in the two classes of cases, and cannot be regarded as an unfriendly or unreasonable discrimination. As to residents it may, and does, exert its taxing power over their income from all sources, whether within or without the State, and it accords to them a corresponding privilege of deducting their losses, wherever these accrue. As to non-residents; the jurisdiction extends only to their property owned within the State and their business, trade, or profession carried on therein, and the tax is only on such income as is derived from those sources. Hence there is no obligation to accord to them a deduction by reason of losses elsewhere incurred" (252 U. S. 57).

In the *Travis* case (the New York State income tax case), the court first considered the provision of section 360 of the Tax Law "for deducting in the computation of net income expenses, taxes, losses, depreciation charges, etc.;" but limiting such deductions in the case of a nonresident to such as "are connected with income arising from sources within the state" (252 U. S. p. 73). The court held this provision to be valid, upon the basis of its decision in the *Shaffer* case: "That there is no unconstitutional discrimi-

nation against citizens of other States in confining the deduction of expenses, losses, etc., in the case of non-resident taxpayers, to such as are connected with income arising from sources within the taxing State, likewise is settled by that decision [*Shaffer* v. *Carter*]" (pp. 75-76).

Next, the court considered the provision of section 362 of the Tax Law as it read in 1919, dealing with exemptions. Under that section, resident taxpayers were allowed an exemption of $1,000 in the case of a single person, $2,000 in the case of a married person and $200 additional for each dependent but nonresident taxpayers were not allowed any exemption. The court held this to be unconstitutional as an unreasonable discrimination between residents and nonresidents (pp. 79-81).

Immediately after the handing down of the decision in the *Travis* case, the Legislature of New York State passed chapter 191 of the Laws of 1920, amending section 362 of the Tax Law, so as to make the exemptions applicable to residents and nonresidents alike, and reimposing an income tax on the 1919 income of nonresidents under the tax law as amended. This statute was upheld in *People ex rel. Stafford* v. *Travis* (231 N. Y. 339, *supra*). The specific point upon which the New York tax statute had been held unconstitutional by the United States Supreme Court was thus cleared up and the statute, as amended, has been enforced ever since as against nonresidents, without any challenge to its constitutionality in the courts, until the filing of the petition for review in the present case.

The Attorney-General maintains that the *Travis* v. *Yale & Towne Mfg. Co.* case disposes of the very point which the petitioner seeks to raise here. He directs attention to the fact that, in the brief submitted on behalf of the appellee in the Supreme Court in that case, its counsel pointed out, as an illustration of the discriminatory nature of the New York statute, that, under section 360, a resident of New York could deduct real estate taxes upon his home while a resident of Connecticut, working in New York, would not be allowed to do so. The statement by the Supreme Court quoted above, upholding the provisions of section 360, seems to have been intended as a direct answer to this contention.

The provision with respect to the deduction of taxes in the 1919 law was substantially the same as the provision in the present law. The provision with respect to the deduction of interest was different, and the provisions for the deduction of life insurance premiums and medical expenses came into the law later (L. 1943, ch. 245; L. 1944, ch. 333). However, the principle of the Supreme Court's decision holding that a distinction could validly be made between residents and nonresidents with respect to real estate taxes is equally applicable to the other types of deductions.

The petitioner argues that the statement by the Supreme Court upholding the validity of the provision limiting deductions in the case of nonresidents was an obiter dictum since the statute was held unconstitutional as to nonresidents on other grounds.

We cannot regard the Supreme Court's statement as a mere obiter dictum, in view of the fact that the alleged invalidity of the deduction provision was squarely presented to the court as one of the grounds upon which the statute was claimed to be unconstitutional. The rejection of that ground of attack by the court is just as authoritative a part of the court's decision as its upholding of the other ground of attack, the denial of exemptions to nonresidents.

Furthermore, apart from the binding authority of the Supreme Court's decision, we believe that the statutory provision under attack here is valid and constitutional. The provision limiting deductions by nonresidents is a necessary corollary of the principle of Federal constitutional law which prohibits a State from taxing the income of nonresidents except to the extent that the income was derived from sources within the State. Under this principle, it is obviously proper, in determining the net income of a nonresident, to limit the deductions to expenses which are connected with gross income derived from sources within the taxing State, since the income derived from any other source is not subject to the State's taxing power. On the other hand, residents are subject to the State's plenary taxing power, and they may be required to pay a tax on all their income, regardless of the location of its source.

The State may therefore appropriately allow them deductions which are not connected with income-producing activities within the State but such deductions are automatically excluded from the deductions allowed to nonresidents by the principle which limits both their taxable income and their deductible expenses to those connected with sources within the taxing State.

No question is, or can be, raised concerning the validity of the disallowance of deductions which are connected with nonresidents' income-producing activities in other States. Since the income is not taxable in this State, obviously the related expenses are not allowable as deductions in this State. However, the problem is complicated by the fact that, in addition to the allowance of deductions for business expenses, the Income Tax Law allows the deduction of such items as taxes and interest, regardless of whether they were incurred in any income-producing activity. To the extent to which the taxpayer is allowed to deduct such items in spite of the fact that they were incurred in personal or non-income-producing activities, the allowance really constitutes an exception to the general principal that personal living expenses are not allowed as deductions for income tax purposes. This aspect of the tax law goes back to the early days of income tax legislation.* Beginning with the 1894 Income Tax Law,** the Federal Government allowed deductions for all real estate taxes, including not only taxes on business property but also taxes upon the taxpayer's personal residence and other property not held for the production of income (28 U. S. Stat. 508, ch. 349, § 28). Similarly, a deduction was allowed for all interest paid, including not only interest incurred as a business expense in connection with the carrying on of income-producing activity but

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* See Seligman on The Income Tax (1914), for an extensive survey of the history of the income tax legislation of various countries. Items of the type here in controversy have long been allowed as deductions in many countries despite the fact that they are personal in character. For example, life insurance premiums were deductible in England as far back as 1806.

** This statute was held unconstitutional on grounds not relevant here in *Pollock* v. *Farmers' Loan & Trust Co.* (157 U. S. 429).

also interest upon personal obligations (see, also, 1913 Income Tax Law, 38 U. S. Stat. 167, ch. 16, § 2).

These deductions undoubtedly had their genesis in governmental policy but it is difficult to ascertain now the precise policy which led to the establishment of each of the deductions. Insofar as the items of taxes and interest relate to residential property owned by the taxpayer, the allowance of the deductions may be said to express a governmental policy in favor of home ownership. This may not have been the motive of the original enactment but the allowance of the deductions has unquestionably had the effect of encouraging taxpayers to purchase their own homes instead of renting from others.

There are other instances of long standing of the allowance of deductions unrelated to income-producing activities. For example, the Federal Income Tax Law, from the beginning, allowed a deduction for the loss of property "arising from fires, storms or shipwreck, and not compensated for by insurance or otherwise," even though the property had not been used in any income-producing activity (28 U. S. Stat. 508, ch. 349, § 28). This provision was undoubtedly designed to extend governmental aid to the taxpayer to help him bear a catastrophic loss.

The New York State Income Tax Law of 1919 (ch. 627) was patterned after the Federal law. The provisions for the deduction of taxes, interest and uninsured casualty losses were substantially the same as those of the Federal Income Tax Law. In recent years New York State has added an allowance of a deduction for life insurance premiums up to $150 and for medical expenses in excess of 5% of the taxpayer's net income, not to exceed $1,500. These deductions also represent a State policy, in the one case to encourage its citizens to obtain life insurance protection and in the other to help its citizens bear the burden of an extraordinary illness or accident.

The constitutional issue in this case arises from the fact that New York State allows deductions of this character by its residents but does not allow such deductions by non-

residents.* The question presented is whether the factor of residence has a legitimate connection with the allowance of these deductions so that a classification upon the basis of residence is justifiable. Not every distinction or discrimination between residents and nonresidents for the purpose of taxation is unconstitutional (*Travellers' Ins. Co.* v. *Connecticut*, 185 U. S. 364; *Shaffer* v. *Carter, supra; General Amer. Tank Car Corp.* v. *Day*, 270 U. S. 367; *Toomer* v. *Witsell*, 334 U. S. 385, *supra;* but see *Smith* v. *Loughman*, 245 N. Y. 486, 491, certiorari denied 275 U. S. 560).

"Like many other constitutional provisions, the privileges and immunities clause [art. IV, § 2] is not an absolute. It does bar discrimination against citizens of other States where there is no substantial reason for the discrimination beyond the mere fact that they are citizens of other States. But it does not preclude disparity of treatment in the many situations where there are perfectly valid independent reasons for it. Thus the inquiry in each case must be concerned with whether such reasons do exist and whether the degree of discrimination bears a close relationship to them." (*Toomer* v. *Witsell*, 334 U. S. 385, 396, *supra.*)

The question in this case is whether the distinction between residents and nonresidents is a reasonable one,

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* In this respect, too, the New York statute was patterned after the Federal statute. Under the Revenue Act of 1918 (40 U. S. Stat. 1067, ch. 18, § 214), nonresident aliens were taxed only on income arising within the United States. Except for a provision for apportioning interest, the statute allowed nonresident aliens to take the deductions allowed to residents only to the extent to which the deductions were connected with income arising within the United States. Similar provisions are contained in the current Federal Income Tax Law (U. S. Code, tit. 26, § 873, subd. [a]; § 213, subd. [a]). While the privileges and immunities clause does not apply to nonresident aliens, the fact that these provisions were in the antecedent Federal law casts some light upon the reasonableness of the State's adoption of similar provisions in its Income Tax Law. It may also be of interest to note that the exemption allowed under the Federal Income Tax Law to a nonresident alien is only $600, regardless of his marital or dependency status, except in the case of residents of Canada and Mexico (U. S. Code, tit. 26, § 873, subd. [d]; § 214).

based upon "valid independent reasons". Where residence is a proper basis of classification, the adoption of such a basis is not violative of the Constitution.

The factor of residence has an obvious connection with the allowance of the deductions of a personal character which are under consideration here. The expenditures are properly associated with the place where the taxpayer resides. They all relate to the personal activities of the taxpayer and his personal activities must be deemed to take place in the State of his residence, the State in which his life is centered.

The expenditures in controversy in this case are clearly a part of the petitioner's personal activities in his home State. The taxes on the petitioner's residence and the interest on the mortgage on his residence are obviously connected with his life in the State of New Jersey. Similarly, the expenditures for life insurance premiums and for medical treatment were made by him in the course of his personal activities, which must be regarded as having taken place in the State of New Jersey, the State of his residence.

If these expenditures are to be allowed as deductions at all, they should be allowed by the State of the taxpayer's residence. Thus, in this case, if there were an Income Tax Law in New Jersey, it might well be expected that New Jersey would allow deductions for residence taxes, mortgage interest and similar expenditures made by its residents. It happens that New Jersey has no Income Tax Law but this does not warrant the petitioner's shifting the allowance for these expenditures, which are intimately connected with the State of his residence, to New York State.*

Furthermore, as we have seen, each of the deductions embodies a governmental policy designed to serve a legiti-

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* It may be noted that if New Jersey had an Income Tax Law containing reciprocal provisions, the petitioner would be entitled to a credit against the New York State tax on his New York income for any tax which he had paid on that income in New Jersey (Tax Law, § 363).

mate social end. The governmental policies are peculiarly related to the factor of residence within the State. The State may therefore constitutionally limit the availability of the deductions to residents of the State. In the exercise of its general governmental power to advance the welfare of its residents, the State may give aid or encouragement of the character embodied in the tax deductions to its own residents, without being constitutionally required to extend similar aid or encouragement to the residents of other States.

The petitioner's principal argument is that, by analogy to the decision of the Supreme Court in the case of *Travis* v. *Yale & Towne Mfg. Co.* (252 U. S. 60, *supra*), holding the distinction between residents and nonresidents with respect to exemptions to be invalid, the distinction as to deductions must also be held invalid. The analogy does not seem to us to be a sound one. Exemptions are allowed as a flat amount, without regard to the making of expenditures of any kind by the taxpayer. A flat exemption, in connection with a graduated income tax, has a direct effect upon the rate of taxation. It excludes a part of the taxpayer's income from the tax base and it lowers the tax bracket into which his remaining income falls. Obviously, it would be unconstitutional for New York State arbitrarily to tax the New York income of a nonresident at a higher rate than that applied to the income of residents. That is the substance of the holding of the *Travis* case. Upon the same principle, the Court of Appeals has held unconstitutional a transfer tax statute which taxed the New York portion of the estates of nonresidents at a different rate from that applied to the estates of residents (*Smith* v. *Loughman*, 245 N. Y. 486, certiorari denied 275 U. S. 560, *supra*).

The deductions here in question are based upon an entirely different principle. As we have seen, for a variety of policy reasons, the State has allowed deductions for certain kinds of expenditures connected with the personal activities of the taxpayer. These activities must be deemed

to have taken place in the State of his residence. The fact of the residence of the taxpayer within the State is thus a legitimate reason for allowing him to make these special deductions. There was no showing in the *Travis* case of a similar justification with respect to the provision limiting the flat exemption to residents only.

The deductions in controversy here are not allowances in a flat amount for all residents, which might be regarded as the equivalent of exemptions or exclusions from income within the meaning of the *Travis* case.* They are allowed only upon a case by case basis, on account of an actual expenditure by the particular taxpayer.

Finally, it should be recalled that the United States Supreme Court itself did not see any inconsistency in the *Travis* case between its upholding of the provision denying certain deductions to nonresidents and its invalidation of the provision denying exemptions to nonresidents.

It should be borne in mind that, at the time of the decision of the *Travis* case, State income tax laws were comparatively new. It may well be that, if the question were reconsidered today in the light of the subsequent extension of State income tax laws and if all the considerations here canvassed were brought before the Supreme Court, a different decision might be reached as to the validity of the distinction between residents and nonresidents with respect to the allowance of personal exemptions. But there is no need to speculate about that possibility. New York State has accepted the Supreme Court's decision with respect to exemptions and has, in fact, gone further than the decision

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* It is to be noted that a nonresident has the same privilege as a resident to take a flat optional deduction of 10% of his gross reportable income, or $500, whichever is less, in lieu of all the specific deductions otherwise allowable (Tax Law, § 360, subd. 18; Regulations of the Department of Taxation and Finance, § 431-a, adopted Oct. 22, 1947 [N. Y. Official Compilation of Codes, Rules & Regulations, 4th Supp., p. 1013]). The petitioner in this case did not claim the optional deduction because he had permissible deductions of over $500, which were allowed without controversy.

required. The amended New York statute allows the full exemption to nonresidents, regardless of how small a part of the nonresident's income may have been derived from New York sources. All that we need determine here is that we are not compelled, by any extension by analogy of the Supreme Court's decision as to exemptions, to invalidate the very provisions of the New York law with respect to deductions which the Supreme Court concurrently upheld.

The determination of the State Tax Commission should be confirmed, without costs.

FOSTER, P. J., BERGAN, COON and ZELLER, JJ., concur.

APPENDIX B

Determination of State Tax Commission and Stipulation

(Dated December 28, 1954)

NOT OFFICIALLY OR UNOFFICIALLY REPORTED

STATE OF NEW YORK

THE STATE TAX COMMISSION

IN THE MATTER

of

THE APPLICATION OF CHARLES GOODWIN, JR., FOR REVISION OR REFUND OF PERSONAL INCOME TAXES UNDER ARTICLE 16 OF THE TAX LAW FOR THE YEAR 1951

Charles Goodwin, Jr., having duly filed an application for revision or refund of additional taxes assessed for the year 1951 under Article 16 of the Tax Law, and the facts having been stipulated per attached stipulation dated November 24, 1954, the State Tax Commission hereby

DETERMINES:

That the additional taxes assessed under Article 16 of the Tax Law against the nonresident taxpayer for the year 1951 on December 4, 1952, in the amount of $124.61, by assessment number AA-529593, are correct and do not include taxes or other charges not legally due and owing and that the taxpayer is not entitled to any revision or

refund of taxes assessed and/or paid under such Article for such year.

THE STATE TAX COMMISSION

Dated: Albany, N. Y.,
this 28th day of December, 1954.

(Signed) E. H. BEST
Commissioner

(Signed) F. ROBERTS BLAIR
Commissioner

IN THE MATTER OF:

CHARLES GOODWIN, JR.
39 Buff Road
Tenafly, N. J.

RE: 1951 Assessment
AA-529593—1951

STIPULATION

WHEREAS, an assessment of additional income tax for the year 1951 in the amount of $124.50 was duly issued against the taxpayer and the taxpayer duly filed an application for revision and refund, and

WHEREAS, the taxpayer now concedes that claimed deductions in the amount of $406.31 were properly disallowed, and

WHEREAS, there are no facts in dispute, the issue being a question of law, the taxpayer hereby waives any right to a formal hearing under section 374 of the Tax Law,

IT IS HEREBY STIPULATED AND AGREED by and between the taxpayer and the State Tax Commission that the appli-

cation for revision and refund be and the same hereby is amended to claim a refund of $101.58 instead of $124.50, and

IT IS FURTHER HEREBY STIPULATED AND AGREED that the following are the only facts involved in this application for revision and refund and may be taken in lieu of the formal hearing as the basis for any determination by the State Tax Commission on said application:

1. The taxpayer is, and at all times during 1951 was, a nonresident of the State of New York with his residence at 39 Buff Road, Tenafly, New Jersey.

2. During 1951 the taxpayer maintained no place of abode, permanent or otherwise, within the State of New York.

3. During 1951 the taxpayer owned no real property whatsoever within the State of New York.

4. The taxpayer is, and during all of 1951 was, an attorney-at-law, duly admitted to practice in all of the courts of the State of New York and not admitted to practice in New Jersey or any other state or jurisdiction whatsoever, except that taxpayer was admitted to practice before various Federal courts and administrative bodies.

5. During 1951 all of taxpayer's income was from sources within the State of New York, consisting entirely of salary paid by Shearman & Sterling & Wright, a law firm with offices at 20 Exchange Place, New York 5, N. Y., and salary paid by The Evergreens, a cemetery corporation with its office and cemetery located in the Counties of Kings and Queens, City and State of New York, totaling $14,000.00, all of which salaries were to compensate the taxpayer for services rendered by him within the State of New York.

6. During 1951 the taxpayer had no capital gains, other gains or profits, or income from any source whatsoever, other than the salary set forth in paragraph 5 above.

7. In 1951 the taxpayer expended the following sums, for which he claimed deductions in his 1951 income tax return:

Bar Association dues	$112.50
Legal periodicals	65.00
Entertainment and car expenses	200.00
Contributions	340.00
Total	$717.50

The New York State Tax Commission has allowed such deductions in computing the taxpayer's net income subject to tax and there is no dispute with respect to these items.

8. In addition to the deductions allowed as set forth in paragraph 7 above, the taxpayer during 1951 paid real estate taxes to the Borough of Tenafly, State of New Jersey, in the amount of $302.03 and interest to The Prudential Insurance Company of America, Newark, New Jersey, in the amount of $669.23. Both of these amounts relate to taxpayer's personal residence in Tenafly, New Jersey, the real estate taxes being assessed against such residence and the interest being paid upon taxpayer's bond and mortgage on such residential premises. The State Tax Commission has refused to allow the deduction of any part of such real estate taxes or interest in determining taxpayer's 1951 income subject to New York State income tax.

9. During 1951 the taxpayer paid medical expenses in the total amount of $1,298.33. The State Tax Commission has refused to allow the deduction of any part of such medical expenses in determining taxpayer's 1951 income subject to New York State income tax.

10. During 1951 taxpayer paid life insurance premiums in the amount of $150.00 with respect to policies insuring against the death of the taxpayer. The State Tax Commission has refused to allow the deduction of any part of such premiums in determining taxpayer's income subject to New York State income tax.

11. The deductions claimed in paragraphs 8, 9 and 10 were disallowed solely on the ground that the taxpayer was a nonresident and said claimed deductions were not connected with income arising from sources within the State of New York.

12. The taxpayer in his 1951 New York State income tax return stated as follows:

> "The taxpayer elects, pursuant to the last paragraph of subdivision 1 of Section 367 of the Tax Law, to report his entire net income from all sources and his net capital gain from New York (the taxpayer had none from any source) and to claim the deductions allowable under Section 360."

Dated: New York, N. Y.
November 24, 1954.

STATE TAX COMMISSION

By F. ROBERTS BLAIR

CHARLES GOODWIN, JR.
Taxpayer per se

APPENDIX C

New York Personal Income Tax Law

CHAPTER 60, ARTICLE 16

"Sec. 351. *Imposition of income tax on net incomes and net capital gains.*—A tax is hereby imposed upon every resident of the state, which tax shall be levied, collected and paid annually upon and with respect to his entire net income as herein defined at rates as follows: • • •

A like tax is hereby imposed and shall be levied, collected and paid annually, at the rates specified in this section, upon and with respect to the entire net income and net capital gain as herein defined, except as hereinafter provided, from all property owned and from every business, trade, profession or occupation carried on in this state by natural persons not residents of the state • • •

Sec. 351-a. *Reimposition of tax against nonresidents.*—The tax provided for in section three hundred and fifty-one of this chapter, upon and with respect to income derived from all property owned and from every business, trade, profession or occupation carried on in this state by natural persons not residents of the state, is hereby reimposed with respect to the taxable income for the calendar year nineteen hundred and nineteen and for any taxable year ending during the year nineteen hundred and nineteen, and for each year thereafter. • • •

• • • • •

Sec. 359. *Gross income defined.*—The term 'gross income':

• • • • •

3. In the case of taxpayers other than residents, gross income includes only the gross income from sources within the state, but shall not include annuities, interest on bank deposits, interest on bonds, notes or other interest-bearing

obligations or dividends from corporations, except to the extent to which the same shall be a part of income from any business, trade, profession or occupation carried on in this state subject to taxation under this article.

* * * * *

Sec. 360. *Deductions.*—In computing net income there shall be allowed as deductions:

* * * * *

2. All interest paid or accrued during the taxable year on indebtedness, except interest referred to in paragraph f of section three hundred fifty-nine of this chapter.

3. Taxes other than estate, inheritance, legacy, succession, gift and income taxes, paid or accrued within the taxable year imposed, first, by the authority of the United States, or of any of its possessions, or, second, by the authority of any state, or territory, or any county, school district, municipality, or other taxing subdivision of any state or territory, not including those assessed against local benefits of a kind tending to increase the value of the property assessed, or, third, by the authority of any foreign government.

* * * * *

11. In the case of a taxpayer other than a resident of the state the deductions allowed in this section, other than in paragraphs ten and seventeen, shall be allowed only if, and to the extent that, they are connected with income arising from sources within the state and taxable under this article to a nonresident taxpayer; and the proper apportionment and allocation of the deductions with respect to sources of income within and without the state shall be determined under rules and regulations to be prescribed by the tax commission.

* * * * *

15. Except as hereinafter limited, expenses paid or incurred during the taxable year, not compensated for by insurance or otherwise, for medical care of the taxpayer, his spouse, or a dependent of the taxpayer, as defined in paragraph two of section three hundred sixty-two of this chapter. The term 'medical care,' as used in this paragraph, shall include amounts paid or incurred for the diagnosis, cure, mitigation, treatment or prevention of disease, or for the purpose of affecting any structure or function of the body or for maternity cases, (including amounts paid for accident, hospitalization or health insurance). A husband and wife who file a joint return may deduct only such expenses as exceed five per centum of the aggregate net income of such husband and wife, computed without the benefit of this paragraph, and the maximum deduction for any taxable year shall not be in excess of fifteen hundred dollars in the case of such husband and wife. An individual who files a separate return may deduct only such expenses as exceed five per centum of his net income, computed without the benefit of this paragraph, and the maximum deduction for any taxable year shall not be in excess of fifteen hundred dollars in the case of the head of a family, and not in excess of seven hundred fifty dollars in the case of all other such individuals.

16. Premiums paid or incurred during the taxable year with respect to any life insurance or endowment policy upon the life of the taxpayer in an amount not exceeding, in the aggregate, one hundred fifty dollars."

* * * * *

Office - Supreme Court, U. S.
FILED
JUN 19 1956
HAROLD B. WILLEY, Clerk

Supreme Court of the United States

OCTOBER TERM, 1955

No. 170

In the Matter of the Application
of
CHARLES GOODWIN, JR.,
against *Appellant,*
THE STATE TAX COMMISSION,
Appellee.

To Review a Determination Made Under
Article 16 of the Tax Law.

MOTION TO DISMISS OR AFFIRM AND BRIEF IN SUPPORT OF MOTION

JACOB K. JAVITS
Attorney General of the State
of New York
Attorney for Appellee
Office and Post Office Address
The Capitol, Albany, N. Y.

JAMES O. MOORE, JR.
Solicitor General
ROBERT W. BUSH
JOHN R. DAVISON
Assistant Attorneys General
Of Counsel

BATAVIA TIMES, LAW PRINTERS,
BATAVIA, N. Y.

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Supreme Court of the United States

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In the Matter of the Application
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THE STATE TAX COMMISSION,

Appellee.

To Review a Determination Made Under
Article 16 of the Tax Law.

MOTION TO DISMISS OR AFFIRM AND BRIEF IN SUPPORT OF MOTION

The State Tax Commission, the appellee above-named, hereby moves this Court under Rule 16(1)(b) of the Rules thereof to dismiss the appeal to this Court taken by Charles Goodwin, Jr., the above-named appellant, from the final order herein (erroneously referred to as a judgment) of the Court of Appeals of the State of New York on the ground that it does not present a substantial federal question, or in the alternative, to affirm the final order so appealed from.

The Nature of the Proceeding and the Determinations Made Below

This proceeding was instituted in the Supreme Court of the State of New York, Albany County, under Article 78 of the New York Civil Practice Act to review a determination of the New York State Tax Commission, and was transferred to the Appellate Division, Third Judicial Department of that Court for initial determination pursuant to the provisions of Section 1296 of that Act. The Appellate Division unanimously confirmed the determination of the State Tax Commission and its opinion is reported in 286 App. Div. at page 694 (App. A of Applt's Jurisdictional Statement). On appeal to the Court of Appeals of the State of New York, the Appellate Division's order of confirmance was unanimously affirmed without opinion. The State Reporter's memorandum of affirmance is printed in 1 N. Y. (2) at page 680, and is appended hereto as Appendix 1.

Statement of the Case

The facts are not in dispute. The appellant duly filed a tax return with the State Tax Commission for the year 1951. Thereafter, additional taxes were assessed against him in the amount of $124.50. Appellant filed an application for a revision or refund and upon the denial of the application demanded a hearing. Since the only issue in dispute involved a question of law, appellant waived a formal hearing and entered into a stipulation of facts with the State Tax Commission.

From the stipulation it appears that appellant is, and at all times during 1951 was, a nonresident of the State of New York, residing in Tenafly, New Jersey. During 1951 he maintained no place of abode, permanent or otherwise,

within the State of New York and owned no real property within the State of New York.

During 1951, all of his income was earned within the State of New York, consisting entirely of salary paid by the New York City law firm of Shearman & Sterling & Wright, with which he was associated, and salary paid by The Evergreens, a corporation of which he was an officer and which owned and operated a cemetery in New York City.

On his 1951 New York State Income Tax Nonresident Return, appellant claimed and was allowed certain deductions in the amount of $717.50. There is no dispute with respect to those items, which consist of deductions connected with income arising from sources within the State of New York, such as Bar Association dues, expenses for legal periodicals, entertainment and car expenses, as well as allowable contributions.

In addition, however, appellant claimed as deductions real estate taxes paid to the Borough of Tenafly, New Jersey, in the sum of $302.03 and mortgage interest in the sum of $669.23, both of those amounts relating to the taxpayer's personal residence in New Jersey. He also claimed a deduction of $710.59, based on medical expenses amounting to $1,298.33, and a deduction for life insurance premiums in the amount of $150. The claimed deductions for real estate taxes, mortgage interest, medical expenses and life insurance premiums were all disallowed by the State Tax Commission on the ground that the taxpayer was a nonresident; that those claimed deductions were not connected with income arising from sources within the State of New York, and that, therefore, those claimed deductions were not allowed by Section 360 of the New York Tax Law (App. C of Applt's Jurisdictional Statement).

As a result of the disallowance of those deductions and certain others not in issue, an additional assessment in the amount of $124.61 was issued on December 4, 1952 for the year 1951. By this proceeding appellant sought revision and refund of the additional taxes assessed to the extent of $101.58.

The Question the Appeal Would Present

Do the provisions of Section 360 of the New York Tax Law denying a nonresident taxpayer who is taxed solely on income arising from sources within the State deductions not connected with such income violate the privileges and immunities clause of Section 2, Article IV of the United States Constitution?

The Ground of the Motion to Dismiss or Affirm

This appeal would not present a substantial federal question for two reasons:

1. The issue that this appeal would present was determined adversely to the appellant's contention by this Court thirty-five years ago in *Shaffer* v. *Carter*, 252 U. S. 37, and *Travis* v. *Yale & Towne Mfg. Co.*, 252 U. S. 60, and these determinations have remained not only unmodified but unchallenged in the intervening years; indeed, the *Travis* case involved the very provisions of the New York State Tax Law which appellant would challenge by this appeal.

2. Aside from these authoritative rulings, the question that this appeal would present does not give rise to serious constitutional doubts.

ARGUMENT

I

This Court has already determined the issue this appeal would present.

In 1919, the New York State Legislature adopted Article 16 of the Tax Law (L. 1919, c. 627)—a Personal Income Tax Law, patterned on the Federal act. Although there have been many amendments during the ensuing 37 years, the basic structure of the law, particularly as related to this case, has remained substantially unchanged. The draftsmen of the New York law were extremely conscious of the problem relating to the taxation of nonresidents and they recognized that this problem was particularly aggravated in New York, with its vast metropolitan area and its status as the financial center of the country. To impose a special tax limited to income derived both by residents and nonresidents from sources within the State, would have resulted in depriving the State of a vast amount of revenue from the income derived by its residents outside of the State of New York. To limit the tax to the entire income of residents of the State would have resulted in a serious discrimination against such residents and in favor of large numbers of residents of other states, particularly Connecticut and New Jersey, who depend upon New York State for their livelihood. An extensive discussion of this matter is found in an article by Professor Seligman, one of the authors of the act, entitled *"The Taxation of Nonresidents in the New York Income Tax"*, published in the National Tax Association Bulletin of November 1919.

To meet this problem, the New York Legislature in effect imposed two separate and distinct taxes—a general tax

on the entire net income of every resident of the State and a special tax on the net income from all property owned and from every business, trade, profession or occupation carried on in the State by nonresidents (§ 351). To avoid the possibility of double taxation, a nonresident was granted a proportionate credit against his New York tax for taxes paid to the state or country of his residence (§ 363).

Since the tax base for residents and nonresidents was entirely different, the Legislature, quite logically, prescribed different deductions. Thus, a resident, taxable upon all of his income, is entitled to deduct all interest paid on indebtedness, all real property taxes and all expenses for medical care in excess of 5% of his net income (§ 360 (2, 3, 15)). A nonresident, on the other hand, taxable only on income derived within the State, is permitted to take such deductions only to the extent that they are connected with such taxable income (§ 360(11)).

Originally, the flat exemptions for the head of a household, husband and wife, and dependents were allowed only to resident ta payers on the theory that they represented a minimum living expense and should, therefore, be granted only by the state of the taxpayer's residence, which could tax all of his income.

Promptly after enactment of the New York State Income Tax Law, the constitutionality of its provisions relating to nonresidents was challenged in *Travis* v. *Yale & Towne Mfg. Co.*, 252 U. S. 60. This was an action in the Federal Court brought to restrain the Comptroller of the State of New York from enforcing the provisions of the law, particularly those sections which required a corporation to withhold a portion of the compensation of its nonresident New York employees for the payment of their New York taxes. The complaint challenged the constitutionality of

the statute on various grounds, including the ground that as to the citizens of Connecticut and New Jersey, it was a deprivation of their privileges and immunities.

The District Court granted the injunction, finding that the withholding of flat exemptions from nonresidents and the limiting of deductions for nonresidents to those connected with income from sources within the State were unconstitutional discriminations.

On appeal to the Supreme Court of the United States, there was presented not only the basic issue of the power of the State to levy an income tax on nonresidents, but also the question of discrimination against nonresidents by virtue of the specific provisions of the law relating (1) to exemptions and (2) to deductions. The discrimination issue, particularly with respect to deductions, was thoroughly briefed by all of the parties. In fact, one of the examples cited in the brief of appellee, the Yale & Towne Mfg. Co., to illustrate the way in which the deduction provisions of the statute would operate as between residents and nonresidents, was the precise situation presented in the present case insofar as deductions for taxes on real estate are concerned. After quoting subdivision 11 of Section 360 of the Tax Law, which then read in part as follows:

> "In the case of a taxpayer other than a resident of the state the deductions allowed in this section shall be allowed only if, and to the extent that, they are connected with income arising from sources within the state; * * *"

the appellee's brief continued:

> "To illustrate again, of two employees of the complainant doing the same work and receiving the same salary, and owning their homes, one, residing in New York, deducts his real estate taxes under Paragraph 3, while the other, residing in Connecticut, is not al-

lowed to deduct his like tax but pays on the full amount to the State of New York. * * *'' (Appellee's Br., pp. 58, 59)

It is abundantly clear that this Court had before it in *Travis* v. *Yale & Towne Mfg. Co.* the same constitutional issue involved in the instant proceeding. If there were any doubt in that regard, it would be dispelled by the fact that the opinion of this Court recites that ''In § 360 provision is made for deducting in the computation of net income expenses, taxes, losses, depreciation charges, etc.; but, by paragraph 11 of the same section, 'In the case of a taxpayer other than a resident of the state the deductions allowed in this section shall be allowed only if, and to the extent that, they are connected with income arising from sources within the state; * * *' '' (252 U. S. 60, at p. 73).

This Court upheld the State's jurisdiction to impose a tax of the kind in question upon the incomes of nonresidents arising from any business, trade, profession or occupation carried on within its borders. This Court also specifically held that there is no unconstitutional discrimination against citizens of other states in confining the deduction of expenses, losses, etc., in the case of nonresident taxpayers, to such as are connected with income arising from sources within the taxing state.

With respect to the exemption provisions, this Court found that the statute did violate the privileges and immunities clause of the Federal Constitution by granting to residents exemptions denied to nonresidents. The faulty provision there under consideration was that then contained in Section 362, which allowed all residents a personal exemption of $1,000 or $2,000, depending on status, and an exemption for dependents, but failed to accord similar exemptions to nonresidents. This aspect of the decision, how-

ever, does not bear on the matter under present discussion, because that provision was amended to include all taxpayers after the decision of this Court in that case.

In upholding the right of the State to tax the income of nonresidents and to confine deductions accorded to nonresidents to such as are connected with income arising from sources within the taxing state, this Court in the *Travis* case referred to its decision in *Shaffer* v. *Carter*, 252 U. S. 37, which affirmed the constitutionality of the Oklahoma income tax statute as applied to nonresidents saying (pp. 75-76):

> "That there is no unconstitutional discrimination against citizens of other States in confining the deduction of expenses, losses, etc., in the case of nonresident taxpayers, to such as are connected with income arising from sources within the taxing State, likewise is settled by that decision."

The contention in appellant's jurisdictional statement that the point relating to deductions was merely dictum in the *Shaffer* case is a futile argument under the circumstances. Regardless of the question of dictum in *Shaffer* v. *Carter*, however, the fact remains that the constitutionality of the provision limiting deductions for nonresidents to such as are connected with income arising from sources within the taxing state, was squarely decided adversely to appellant's contention with reference to the New York Personal Income Tax Law in *Travis* v. *Yale & Towne Mfg. Co., supra.*

The provision with respect to the deduction of taxes which was sustained by this Court is substantially similar to the provision here under attack (§ 360(3)). The interest provision is somewhat changed (§360(2)) and the medical expense and life insurance deductions were added

later (§ 360(15, 16)). Nonetheless, the principles enunciated in the *Travis* case are decisive of the constitutional issue, which this appeal would present.

II

There can be no doubt as to the constitutionality of the challenged statute.

Putting to one side these authoritative rulings, the question presented does not give rise to serious constitutional doubts. The New York Legislature has made a classification upon the basis of residence and, viewed as a matter of first impression, judicial inquiry is confined to whether or not such a classification is justifiable. Upon the one attacking the classification rests the burden of showing that it is unreasonable and arbitrary (*Lindsley* v. *Natural Carbonic Gas Co.*, 220 U. S. 61, 78-79). Here, there is not the slightest intimation of any attempt upon the part of the State to penalize or discriminate against the nonresident taxpayer. Indeed, the New York statute accords the nonresident taxpayer advantages not available to its resident taxpayers in that nonresidents may exclude from gross income the returns received on bank deposits and securities held within the State, except to the extent that they are used in business or trade (§ 359(3)).

The source and the reason for the different treatment accorded residents and nonresidents in the matter of deductions are found in the constitutional limitation which restricts the State from taxing a nonresident on income from sources outside the State. As pointed out above, the tax on residents is a general tax on all income, while the tax on nonresidents is a special tax. Since the tax bases are different, it is entirely proper that the deductions

should be different and should be related, as they are, to the tax base. The classification, therefore, rests on the inherent difference in taxing jurisdiction over the resident and the nonresident taxpayer.

The fact that, as a practical result of this distinction, appellant, who has the good fortune to reside in a state which imposes no personal income tax and the ill fortune to have no sources of income outside of New York State earnings, may suffer a slight disadvantage as compared to his counterpart residing in New York is no test of the constitutionality of this classification. Numerous examples of the reverse of this situation are readily available. If the appellant and his New York counterpart made identical investments in New York or any other state, the income from such investments would be taxable to the resident by New York, but would not be taxable to the appellant. Indeed, upon analysis, the balance of advantage of the New York Tax Law is wholly in favor of the nonresident, and any hardship that may arise by its application is a result of personal circumstances rather than any attempt to discriminate.

In *Travellers' Insurance Co.* v. *Connecticut*, 185 U. S. 364, at page 369, the Supreme Court said:

> "You cannot put one resident against one non-resident stockholder and by a comparison of their different burdens determine the validity of the legislation any more than you can place a stockholder resident in one municipality over against a stockholder resident in another municipality, and by comparison of their different burdens determine the validity of the tax law in respect to resident stockholders."

See, also, *Maxwell* v. *Bugbee*, 250 U. S. 525.

The deductions in question are undoubtedly founded on a policy of the State of New York to encourage its citizens

to acquire homes and to purchase life insurance. The State also has an interest in alleviating the financial strain occasioned its citizens by unusual medical expense. The Courts below found that these expenditures are properly associated with the place where the taxpayer resides and are related to his activities and way of life in his home state.

CONCLUSION

This Court should dismiss the appeal on the ground that it does not present a substantial federal question or affirm the order appealed from.

Dated: June 12, 1956.

Respectfully submitted,

JACOB K. JAVITS
Attorney General of the State
of New York
Attorney for Appellee

JAMES O. MOORE, JR.
Solicitor General

ROBERT W. BUSH
JOHN R. DAVISON
Assistant Attorneys General
Of Counsel

Appendix 1

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In the Matter
of
CHARLES GOODWIN, JR.,

Appellant,

against

STATE TAX COMMISSION,

Respondent.

———o———

Argued February 15, 1956; decided March 15, 1956.

Taxation—personal income tax—deductions by nonresidents—constitutionality of disallowance of nonresident's nonbusiness deductions—nonresident whose income was earned in New York claimed deductions in 1951 income tax return for taxes and mortgage interest on New Jersey home and for medical expenses and life insurance premiums—State Tax Commission disallowed such deductions—Tax Law (§ 360, subd. 11) provides that in case of taxpayer, other than resident of State, deductions allowed only to extent that they are connected with income arising from sources within State and taxable to nonresident taxpayer—Appellate Division confirmed disallowance of such deductions—order affirmed.

Matter of Goodwin v. *State Tax Comm.*, 286 App. Div. 694, affirmed.

Appeal, on constitutional grounds, from an order of the Appellate Division of the Supreme Court in the third judicial department, entered December 1, 1955, which unanimously confirmed a determination of respondent making an assessment of additional taxes against appellant for

the year 1951. Appellant, a lawyer employed by the New York City law firm of Shearman & Sterling & Wright resided in Tenafly, New Jersey, during 1951. His income, all earned in New York, was derived from salary paid by said law firm, and by the Evergreens, a cemetery corporation in the city of New York, of which he was vice-president. In his 1951 New York income tax return he claimed deductions for bar association dues, legal periodicals, business expenses related to his New York income and contributions to New York charities, and they were allowed. He also claimed as deductions real estate taxes in the sum of $302.03 and mortgage interest in the sum of $669.23—both amounts being paid in connection with his residence in New Jersey—medical expenses in the sum of $1,298.33 and life insurance premiums in the amount of $150. These deductions were disallowed by the State Tax Commission. The State Tax Commission made an assessment of additional taxes against appellant in the sum of $124.50. Appellant sought refund of the additional taxes to the extent of $101.58. Subdivision 11 of section 360 of the Tax Law provides: "In the case of a taxpayer other than a resident of the state the deductions allowed in this section • • • shall be allowed only if, and to the extent that, they are connected with income arising from sources within the state and taxable under this article to a nonresident taxpayer." The Appellate Division stated that that provision did not offend against the provisions of the Federal Constitution (art. IV, § 2) granting to the citizens of each State "all Privileges and Immunities of Citizens in the several States", and that a State need not accord a nonresident a deduction in computing his net income for expenses not connected with income derived from sources within the State. The Appellate Division cited *Shaffer* v.

Carter (252 U. S. 37) and *Travis* v. *Yale & Towne Mfg. Co.* (252 U. S. 60).

Charles Goodwin, Jr., appellant in person.

Jacob K. Javits, Attorney-General (James O. Moore, Jr., of counsel), for respondent.

Order affirmed; no opinion.

Concur: Conway, Ch. J., Desmond, Dye, Fuld, Froessel, Van Voorhis and Burke, JJ.